



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/168714

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 16, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Rock County Dept. of Social Services to recover FoodShare benefits (FS), a hearing was held on November 18, 2015, by telephone. A hearing set for October 15, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner was overpaid FS because she incorrectly reported the father of her youngest child to be living outside her household.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED] |  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Rock County Dept. of Social Services  
P.O. Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. In early 2014 petitioner received BedgerCare Plus MA for a household including her, two children, and for the father of the younger one, S.G. In June, 2014, petitioner reported that S.G. moved out, and that her only income was \$389 monthly child support for her older child. She requested FS at that time.

3. Petitioner began to receive maximum FS of \$497 monthly for a three-person household.
4. In early November, 2014 the worker received information that S.G. was listed by the child support agency as being at the same address as petitioner. When asked, petitioner reported that S.G. was sleeping on her couch, and the worker requested verification of his income because he had to be added to the case. Before the income verification was received petitioner reported on November 28, 2014 that S.G. moved out, and the worker removed him from the case without further inquiry.
5. During a review in June, 2015, the worker noted that the child support agency still listed S.G. as living with petitioner. While questioning petitioner the worker noted a man's voice in the background of the call. The worker requested an investigation because of the questionable information, along with the fact that petitioner still reported her only income to be child support.
6. The investigator concluded that S.G. lived with petitioner based upon the parties own statements. See Exhibit 2. Essentially they told him that S.G. "visits" daily, uses petitioner's address as his own mailing address, uses petitioner's car, and that he has no permanent residence (even though he earns over \$25,000 per year). In addition neighbors told the investigator that that S.G. lived there.
7. The county obtained S.G.'s earnings history; with S.G.'s income the household would not have been eligible for FS for the entire time in which she received FS. By a notice dated August 6, 2015, the county informed petitioner that she was overpaid \$5,401 in FS from June 16, 2014 through May 31, 2015, claim no. [REDACTED]

### DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

The federal FS regulations define FS household composition as follows:

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a). FS rules provide further as follows:

The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

- (i) Spouses;
- (ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and
- (iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent.

7 C.F.R. §273.1(b)(1); see also FS Handbook, Appendix 3.3.1.2.

If S.G. was living in petitioner's household, he had to be included in her FS case because their child-in-common also was a resident of the household. There is no definition in the code of the meaning of "living with." Furthermore, in my 25 years in this position I have not found an appellate decision that defines the phrase. Basically the determination revolves around a common sense interpretation of whether a person is living in the FS household.

The problem for petitioner's side is that there is little evidence that the couple actually was separated except the couple's own statements and the statement of petitioner's brother. I have conducted well over one hundred hearings where the issue is whether a family member, almost always the father, actually was in the home when reported to be absent. In my experience there are a number of indications that a couple who claimed to be separated actually remained together, with four standing out. One is that the father continued to use the mother's address, even after she moved to a different address. Another is that the father had no separate, verifiable address, but instead was alleged to stay with friends or relatives. The third is that neighbors and/or the landlord believed that the father lived in the home. The fourth is that it is reported to the child support agency that his address is the same as her address (because then the child support agency will not enforce payment of support). In addition, a fifth indication is that the person reports that the father only recently moved in, to explain his presence; in this case petitioner testified that he began to be around regularly only for the month prior to the investigator's visit.

I conclude that the agency correctly determined the overpayment in this case. The simple fact is that despite the alleged separation petitioner and S.G. made almost no effort to actually separate. They continued to act as a family so much that neighbors had no doubt that they lived in the residence together. Perhaps they did have an arrangement in which S.G. slept elsewhere, at least occasionally, so that they could say he lived elsewhere. However, from a simple, common sense view, they never were apart. S.G.'s testimony that he left petitioner because he didn't like the woman petitioner moved in with is contradicted by petitioner's own reports that he was sleeping on the couch in late 2014. Petitioner's brother testified that S.G. stayed with him, but not all the time. Couples who break up do not continue to spend substantial time together and work in concert to help each other, but couples that pretend to break up for welfare purposes always seem to continue to work together. That is precisely the situation here. At the end of the hearing, petitioner tried to give me her new address, and S.G. helped her out. I cannot conclude that this couple ever was separated while petitioner received FS while claiming to be separated.

### **CONCLUSIONS OF LAW**

The county correctly determined an FS overpayment resulting from petitioner incorrectly reporting that the father of her youngest child was out of the household; had he been included in the FS household it would have been ineligible for FS for the entire period of June, 2014 through May, 2015.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby dismissed.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

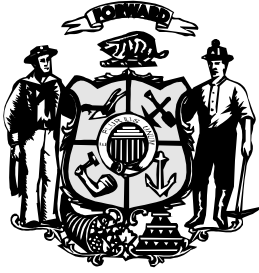
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 30th day of November, 2015

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 30, 2015.

Rock County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability